86-529

No. ———

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

TRINIDAD CORPORATION,
Petitioner,

v.

DISTRICT NO. 1—PACIFIC COAST DISTRICT,
MARINE ENGINEERS' BENEFICIAL ASSOCIATION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION, SUPREME COURT OF THE STATE OF NEW YORK, FIRST JUDICIAL DEPARTMENT

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DATED: October 6, 1986

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QUESTION PRESENTED FOR REVIEW

Whether a labor arbitration award rendered pursuant to a collective bargaining agreement between an employer and a union is unenforceable under Section 301 of the Labor Management Relations Act when the award by its own terms applies to two employers and a union which did not participate in the arbitration proceeding and were not signatories to the collective bargaining agreement.

PARTIES

The parties to the proceedings in the Appellate Division, Supreme Court of the State of New York, First Judicial Department, were Trinidad Corporation and District No. 1—Pacific Coast District, Marine Engineers' Beneficial Association.*

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* In accordance with Rule 28.1 of the Rules of this Court, please note that Trinidad Corporation is a wholly-owned subsidiary of Apex Shipping, Inc., which is a wholly-owned subsidiary of Apex Holding Co. Apex Holding Co. is, in turn, a wholly-owned subsidiary of Apex Oil Co.

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No. ———

TRINIDAD CORPORATION,
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v.

DISTRICT NO. 1—PACIFIC COAST DISTRICT,
MARINE ENGINEERS' BENEFICIAL ASSOCIATION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION, SUPREME COURT OF THE STATE OF NEW YORK, FIRST JUDICIAL DEPARTMENT

Petitioner, Trinidad Corporation (hereinafter "Trinidad"), an employer subject to the provisions of the National Labor Relations Act ("NLRA"), 29 U.S.C. § 151 *et seq.*, and Section 301 of the Labor Management Relations Act of 1947 ("LMRA"), 29 U.S.C. § 185, respectfully prays that a writ of certiorari issue to review a judgment of the Appellate Division, Supreme Court of the State of New York, First Judicial Department.

OPINIONS BELOW

The January 21, 1986 order of the Appellate Division, Supreme Court of New York, First Judicial Department, which affirmed the judgment of the Supreme Court of

New York, County of New York, Special Term, is unreported and is reproduced herein as Appendix A. Reproduced in Appendix B is the unreported November 14, 1984 opinion of the Supreme Court of New York, County of New York, Special Term, which directed that judgment be entered against Trinidad; reproduced in Appendix C is the judgment of the Supreme Court of New York, County of New York, Special Term, which was entered on November 23, 1984. Reproduced in Appendix D is the unreported July 8, 1986 order of the Court of Appeals of the State of New York, which denied Trinidad's motion for leave to appeal to that court.

JURISDICTION

The judgment of the Appellate Division, Supreme Court of New York, First Judicial Department, was entered on January 21, 1986. Thereafter, on July 8, 1986, the Court of Appeals of the State of the New York denied Trinidad's motion for leave to appeal. This petition for a writ of certiorari has been filed within ninety days of that date. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

STATUTES INVOLVED

The statutes involved in this case are Section 301(a) of the LMRA, 29 U.S.C. § 185(a), and the NLRA, 29 U.S.C. § 151 *et seq.*, especially Section 8(b) of the NLRA, 29 U.S.C. § 158(b). These provisions are reproduced in Appendix F.

STATEMENT OF THE CASE

In this proceeding, District No. 1—Pacific Coast District, Marine Engineers' Beneficial Association ("MEBA"), has brought suit under Section 301(a) of the LMRA to enforce an arbitration award which arose out of a collective bargaining agreement between Trinidad and MEBA. The award is inconsistent with federal labor law because it attempts to bind two other, non-

signatory, employers and an entirely independent union. Indeed, the award at issue ordered that the agreement be applied to the nonsignatory employers, thereby displacing an existing labor contract and depriving the workers of these nonsignatories of the right to be represented by their chosen union. The defectiveness of the award is further demonstrated by the fact that the General Counsel of the National Labor Relations Board ("NLRB" or "Board") has issued a complaint charging that MEBA has violated the NLRA by attempting to enforce the award (App. E).

Trinidad, a Delaware corporation, is engaged in the ownership and operation of U.S. flag ocean-going tanker vessels.[1] In 1981, Trinidad was acquired by Apex Shipping, Inc., a Missouri corporation. Apex Shipping, Inc. is owned by the Apex Holding Company, also a Missouri corporation.

MEBA is a labor organization representing licensed marine engineers (App. E at 12a, 13a). Prior to June 1984, it represented the licensed marine engineers of Trinidad.

On June 16, 1981, Trinidad and MEBA entered into a labor agreement which covered the terms and conditions of employment of the licensed marine engineers employed on Trinidad's vessels. On October 11, 1983, MEBA demanded that Trinidad participate on October 19, 1983 in the arbitration of a grievance arising out of an alleged violation of the agreement. The arbitration was to be held before W. J. Usery, Jr., the arbitrator designated

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[1] The factual summary presented in this petition is taken from the affidavits submitted by Trinidad at various times while the case was being processed in the New York state courts. No testimony was ever taken in this case, with the exception of testimony offered by MEBA during the *ex parte* arbitration hearing. *See infra*, p. 6. A federal district court opinion which makes findings of fact relevant to the instant case is *District No. 1—Pacific Coast District, Marine Engineers' Beneficial Ass'n v. Trinidad Corp.*, 583 F. Supp. 262 (S.D.N.Y. 1984).

pursuant to the agreement. MEBA's grievance alleged that Trinidad breached the agreement by failing to have the agreement applied to two other employers, Crest Tankers, Inc. ("Crest") and Clayton Tankers, Inc. ("Clayton").[2] MEBA's grievance further asserted that MEBA was entitled to have its members perform the work of Crest's licensed marine engineers.[3]

Crest, which was incorporated in Missouri in September 1982, is engaged in the ownership and operation of U.S. flag vessels. Crest is owned by Apex Holding Company. On October 29, 1982, Crest entered into a collective bargaining agreement with the Crest Tankers Officers' Association ("CTOA").[4] This agreement covers Crest's licensed personnel, including its licensed marine engineers.

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[2] Specifically, MEBA alleged that Trinidad violated the "subsidiaries and affiliates" clauses of the agreement, which provide:

> SECTION 36. COVERAGE OF AGREEMENT
>
> (a) This Agreement covers all licensed marine engineers employed on U.S. flag ocean-going tanker vessels, of whatever type, owned or operated (both at the present or at any time during the life of this agreement) by the Company or its subsidiary or affiliate, or by an entity for which the Company acts as a bargaining agent, and whether operated as an agent or under a bareboat charter, including vessels owned by the company or its subsidiary or affiliate and operated by another entity, but not including a vessel operated on a time charter basis . . . .
>
> (b) The term "subsidiary" or "affiliate" shall be deemed to include any business entity whether corporate, partnership, trust or individual which is effectively controlled by or effectively controls the Company either directly or indirectly.

[3] Clayton, which was incorporated in Missouri in January 1983, owns, but does not itself operate, U.S. flag vessels. As a consequence, Clayton has no shipboard employees.

[4] CTOA is a labor organization within the meaning of the NLRA and the LMRA (App. E at 12a), and operates an office in Palisades, New York.

In its October 11, 1983 notice of arbitration, MEBA invited Crest and Clayton to participate in the arbitration hearing. These parties declined to do so.[5] On October 19, 1983, Trinidad made a special appearance before the arbitrator to contest the arbitrability of the grievance and to seek a continuance of the hearing. After three hours of argument, Arbitrator Usery grudgingly granted a continuance until November 9, 1983.

On November 1, 1983, Trinidad instituted an action to obtain a temporary restraining order in the United States District Court for the District of Columbia on the ground that Arbitrator Usery did not have jurisdiction over all the parties necessary to resolve MEBA's grievance. Trinidad asked the court to enjoin the November 9 arbitration hearing so that a decision on the issues raised by MEBA could be rendered by an alternative forum, *i.e.*, a multipartite arbitration, or the court itself, in which all the parties could appear and be bound. On November 3, 1983, at the behest of the court, Trinidad requested a continuance of the arbitration until after November 14, 1983, the date on which the court scheduled the preliminary injunction hearing. Despite the fact that the request for continuance was made at the court's urging, Arbitrator Usery refused to grant the continuance.

The district court granted Trinidad's request for a temporary restraining order on November 4. The U.S. Court of Appeals for the D.C. Circuit vacated this order on November 8—hours before the arbitration hearing scheduled for the next day. *See In re District No. 1—Pacific Coast District, Marine Engineers' Beneficial Ass'n*, 723 F.2d 70 (D.C. Cir. 1983). The district court then

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[5] In an October 31, 1983 telegram, Trinidad asked CTOA whether it "would participate in [the] November 9 hearing and agree to be bound by [the] Usery award." CTOA responded that it was unwilling to be bound by an arbitrator selected by a company with which it has no bargaining relationship and a rival union which was seeking to represent its workers.

ordered the parties to attend a status conference on November 9, at the same time the arbitration hearing was scheduled. Because of these developments, Trinidad renewed its request for a continuance, but the arbitrator again denied the request. As a result, Trinidad was unable to present any evidence on the merits of the grievance at the November 9 arbitration hearing.

On December 23, 1983, Arbitrator Usery issued an opinion and award sustaining MEBA's grievance. On the merits, the arbitrator ruled that Crest and Trinidad are "alter egos" and a "single, common employer," and that the licensed marine engineers of Crest are "accreted to Trinidad's unit of engineers". The Arbitrator ordered Trinidad, *inter alia*, to:

> 1. Immediately cause Apex Oil, Crest and Clayton to execute the [Trinidad-MEBA] Agreement.
>
> 2. Immediately apply the terms of the [Trinidad-MEBA] Agreement to all licensed marine engineers employed on all vessels owned or operated by Crest or Clayton.
>
> 3-4. Pay [wages and fringe benefit contributions for] a full complement of engineers . . . on all vessels owned or operated by Crest and/or Clayton from the time said vessels were acquired until such time as the licensed marine engineers employed thereon are covered by the [Trinidad-MEBA] Agreement.[6]

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[6] The December 23, 1983 award did not specify the dollar amount that Trinidad was to pay as damages. A separate arbitration hearing was held on May 20, 1985 to determine the specific amount of damages. Although no evidence was introduced at either hearing showing that any MEBA members had suffered a loss of pay or benefits as a result of Trinidad's alleged breach, Arbitrator Usery, in an award dated August 12, 1985, ordered Trinidad to pay approximately seven-and-a-half million dollars. Trinidad filed a petition in the Supreme Court of New York, County of New York, Special Term, to vacate the August 12, 1985 award, but that petition was denied in March 1986. Thereafter, Trinidad filed an appeal with the Appellate Division, First Judicial Department, which appeal is presently pending.

On December 23, 1983, the same day the arbitrator's award was rendered, MEBA filed in the Supreme Court of New York, County of New York, Special Term, a petition under Section 301 of the LMRA to confirm the arbitration award. On January 16, 1984, Trinidad filed an answer in which it raised several affirmative defenses, and on March 22, 1984, Trinidad filed a cross motion to vacate or set aside the award. Among the arguments raised by Trinidad in its answer and cross motion was the contention that the arbitrator had exceeded his authority and issued an award contrary to public policy and federal labor law in that his award applied to nonsignatories to the agreement.

On November 14, 1984, the New York Supreme Court, Special Term, per Judge Maresca, issued an opinion granting MEBA's petition to confirm the award and denying Trinidad's cross-motion to vacate that award. The court's opinion consists of a few short, conclusory paragraphs. On the issue of whether there should have been a multipartite arbitration, the court simply expressed its view that it is not "in the discretion of the court to determine what type of arbitration or other forum would have been best in this matter" (App. B at 6a).

In Trinidad's appeal to the Appellate Division, First Judicial Department, one of the principal questions presented, and decided, was "[w]hether the arbitrator's order directing Trinidad to apply its collective bargaining agreement with MEBA to two nonsignatory employers, one of which is bound by a separate, valid collective bargaining agreement, who did not participate in the arbitration hearing was in excess of the arbitrator's authority and contrary to public policy and applicable law" (Brief for Respondent-Appellant Trinidad Corporation, at 1). On January 21, 1986, the Appellate Division ruled against Trinidad on this issue, and affirmed the decision of Special Term (App. A).

Thereafter, on July 8, 1986, the New York Court of Appeals denied Trinidad's motion for leave to appeal to that court (App. D). In its motion for leave to appeal, Trinidad had repeated its contention that the award was improper under federal labor law since no multipartite arbitration was conducted.

Meanwhile, in a parallel proceeding initiated by Crest, the General Counsel of the NLRB has issued a complaint against MEBA which alleges that MEBA's efforts to compel arbitration and to enforce the award in the New York state courts violate the NLRA. Specifically, the NLRB has charged MEBA with violating Sections 8(b)(1)(A) and (B) and 8(b)(2), 29 U.S.C. § 158(b)(1)(A) and (B) and (b)(2), because by compelling arbitration and enforcing the arbitration award in the New York state courts it has unlawfully sought to extend the Trinidad-MEBA contract to Crest, an entirely separate employer, and Crest's licensed marine engineers, who are already represented by the CTOA (App. E at 14a-15a).[7]

REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD RESOLVE THE CONFLICT AMONG THE FEDERAL COURTS OF APPEALS REGARDING THE APPROPRIATENESS OF MULTIPARTITE ARBITRATION

In upholding the arbitrator's award, which was rendered after a bilateral arbitration without the participation of Crest and CTOA, the New York Supreme Court, Special Term, found that it is not "in the discretion of the court to determine what type of arbitration or other

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[7] An administrative law judge has issued a preliminary decision dismissing the complaint. *District No. 1, Pacific Coast District, Marine Engineers' Beneficial Ass'n (Crest Tankers, Inc.)*, NLRB Case No. 14-CB-6124 (Sept. 24, 1986). This is not a final decision as of the filing of this petition, as the General Counsel still has the opportunity to appeal to the NLRB.

forum would have been best in this matter" (App. B at 6a). In so ruling, the court mistook this case for the usual labor dispute involving two parties to one collective bargaining agreement, instead of a dispute which involves two valid collective bargaining agreements and the claims of at least four parties.[8] Where such multiparty jurisdictional disputes exist, this Court has indicated its approval of court-ordered multipartite arbitration; however, the lower federal courts have not consistently compelled multipartite arbitration in this situation.

A. The Decision Of This Court In *Union Pacific Railroad* Supports Multipartite Arbitration

Although this Court has not directly addressed the issue of the propriety of multipartite arbitration under the NLRA, it has indicated its approval of the process in disputes under the Railway Labor Act, 45 U.S.C. § 151 *et seq.*[9] The Court's approval came in *Transportation-Communication Employees Union v. Union Pacific Railroad*, 385 U.S. 157 (1966), in which this Court concluded that bilateral arbitration is not the proper means for resolving multi-party work jurisdiction disputes and that reliance on bilateral arbitration in such circumstances runs counter to federal labor policy. In *Union Pacific*, the Court ordered the Railroad Adjustment Board ("RAB") to settle a work assignment dispute between competing unions in one proceeding. The Court concluded that the RAB's approach of conducting separate bilateral proceedings in which only one union at a time participated was imprudent since "first ordering the railroad to pay one union and then later, in a separate

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[8] It involves five parties if the interests of Clayton Tankers, which has no shipboard employees, are taken into account.

[9] This Court has relied on cases decided under the Railway Labor Act in resolving disputes arising under the NLRA. *See, e.g., Carey v. Westinghouse Electric Corp.*, 375 U.S. 261, 265 (1964).

proceeding, ordering it to pay the other union," would place the employer in a "merry-go-round situation," one hardly consistent with the policy of settling labor disputes in a prompt and orderly fashion. *Id.* at 162. Accordingly, the Court remanded the dispute to the RAB so that it could consider together the claims of both unions, and thereby resolve the entire dispute. Thus, this Court recognized the benefit of having all parties present at an arbitration.

The Court's decision in *Union Pacific* implicitly modified the Court's earlier decision in *Carey v. Westinghouse Electric Corp.*, 375 U.S. 261 (1964). In *Carey*, a local of the International Union of Electrical Workers ("IUE") filed a grievance alleging that certain employees represented by another union were performing work which was to be exclusively performed by the IUE. The employer refused to arbitrate with the IUE on the ground that the dispute involved a matter for the NLRB. The Court held that the parties should proceed with the grievance procedure. *Id.* at 266. It noted that if the dispute were "jurisdictional", the NLRB would only become involved in the event either one of the unions used coercion to obtain the work in question, and if the dispute were "representational", NLRB involvment would await the filing of an unfair labor practice charge or a unit clarification petition. *Id.* at 263-64, 266-67. Since both the fact and nature of NLRB involvement remained speculative, the Court saw no reason to bar the bilateral arbitration proceeding. Moreover, the Court thought that "resort to arbitration may have a . . . curative effect even though one union is not a party." *Id.* at 272.

Read in light of *Union Pacific*, *Carey* stands for the limited proposition that the possibility that a work assignment dispute may eventually involve the NLRB should not by itself prevent a bilateral arbitration from taking place; it does not address the wisdom of ordering

a multipartite arbitration as a substitute for separate bilateral proceedings.[10]

It is clear from *Union Pacific* that multipartite arbitration is the proper mechanism for the resolution of disputes among three or more parties. The lower courts, however, have ruled inconsistently on this issue as some have relied on *Union Pacific* and others on an improperly broad interpretation of *Carey*. Therefore, the instant petition should be granted to clarify any misconceptions that the lower courts have with respect to this Court's position on the issue of multipartite arbitration.

B. The Federal Courts Are In Conflict As To The Appropriateness of Multipartite Arbitration

Several courts of appeals, following *Union Pacific*, have approved of multipartite proceedings to resolve disputes involving more than two parties. The Second Circuit, in *CBS v. American Recording and Broadcasting Ass'n*, 414 F.2d 1326 (2d Cir. 1969), *aff'g* 293 F. Supp. 1400 (S.D.N.Y. 1968), recognized that federal labor law policy can only be satisfied if all parties are joined in one forum which can consider and dispose of all claims. Specifically, the court ruled that multi-party work jurisdiction disputes must, and indeed can only be, resolved by bringing all parties to the dispute before a forum that can consider both collective bargaining agreements and then determine which of the competing unions is entitled to the disputed work. *Id.* at 1329. This method of dispute resolution is required, as the district court noted, because it is "[r]ational, meaningful and peaceful" as well as "practicable, economical and convenient." 293 F. Supp. at 1402-03. Moreover, multipartite arbitration is "sound because it not only avoids duplication

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[10] Indeed, the Court specifically noted that one of the problems with a bilateral arbitration is that "unless the other union intervenes, an adjudication of the arbiter might not put an end to the dispute." *Id.* at 265.

of effort but the possibility of conflicting awards." *Id.* at 1403. *See also Bell Aerospace Co. v. Local 516, UAW*, 500 F.2d 921, 923 (2d Cir. 1974) (approving *CBS*).

Following the Second Circuit, the Third Circuit, in *Window Glass Cutters League v. American St. Gobain Corp.*, 428 F.2d 353, 355 (3d Cir. 1970), noted that a district court clearly has authority to order multipartite arbitration where two unions dispute the work assignments of one employer. Similarly, the Tenth Circuit, in *Local 850, International Ass'n of Machinists v. T.I.M.E.-DC Inc.*, 705 F.2d 1275 (10th Cir. 1983), upheld the district court's order directing the employer and two unions to submit their dispute to tripartite arbitration where the previous bilateral arbitrations had resulted in inconsistent awards.[11]

In addition to the Second, Third and Tenth Circuits, numerous district courts have recognized the need for joinder of all parties in multi-party jurisdictional disputes. Specifically, in *Baltimore Typographical Union No. 12 v. A.S. Abell Co.*, 441 F. Supp. 596, 602 (D. Md. 1977), *aff'd mem.*, 588 F.2d 1347 (4th Cir. 1979), the court ordered tripartite arbitration where two unions asserted jurisdiction, pursuant to two separate collective bargaining agreements, over the same work. Similarly, the court ordered tripartite arbitration in *Local No. 552, United Brick and Clay Workers v. Hydraulic Press Brick Co.*, 317 F. Supp. 818, 827-28 (E.D. Mo. 1974), in which one union asserted claims against two companies. Further, in *United Steel Workers v. Crane Co.*, 456 F. Supp. 385 (W.D. Pa. 1978), the court directed a union and two employers to resolve their dispute in tripartite arbitra-

[11] The Seventh Circuit has also indicated its general approval of the multipartite process. *Local 416, Sheet Metal Workers International Ass'n v. Helgesteel Corp.*, 507 F.2d 1053 (7th Cir. 1974) (court ordered tripartite arbitration). *But see Laborers' International Union v. W.W. Bennett Construction Co.*, 686 F.2d 1267, 1275 (7th Cir. 1982) (multipartite arbitration not appropriate where subcontractor not bound to arbitrate).

tion. *See also Local 201, United Association of Journeymen v. Shaker, Travis & Quinn, Inc.*, 555 F. Supp. 314, 318-19 (S.D.N.Y.), *vacated on other grounds*, 709 F.2d 178 (2d Cir. 1983) (tripartite arbitration ordered for two unions and one employer).

In contrast to the Second, Third and Tenth Circuits, as well as the district courts cited above, the D.C. Circuit has expressly refused to order multipartite arbitration. *In re District No. 1—Pacific Coast District, Marine Engineers' Beneficial Ass'n*, 723 F.2d 70 (D.C. Cir. 1983). As set forth in the Statement of the Case, *supra*, the D.C. Circuit vacated the district court's order enjoining MEBA from pursuing bilateral arbitration against Trinidad. Trinidad had requested that MEBA be required to arbitrate with Crest and the CTOA, as well as Trinidad. Relying on an excessively broad interpretation of *Carey*, the court of appeals held that it was an abuse of discretion for the district court to enjoin the arbitration because of the risk that the award might affect nonsignatories. *Id.* at 79. The court of appeals reasoned that the right of Trinidad to challenge enforcement of the award obviated the need for multipartite arbitration. *Id.*

Several district courts have similarly refused to order multipartite arbitration. In *Nashua Typographical Union v. Telegraph Publishing Co.*, 365 F. Supp. 262, 264 (D.N.H. 1973), the court, citing *Carey*, allowed a bilateral arbitration to go forward even though the employer asserted that two unions were involved in the work dispute. In *Local 189, Service Employees Union v. Scot Lad Foods, Inc.*, 513 F. Supp. 839 (N.D. Ill. 1981), the court refused to order tripartite arbitration as the court believed there was only a slight possibility the employer would be subject to inconsistent results.[12]

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[12] *See also District No. 1—Pacific Coast District, Marine Engineers' Beneficial Ass'n v. Trinidad Corp.*, 583 F. Supp. 262 (S.D.N.Y. 1984) (dicta) (multipartite arbitration not appropriate to resolve dispute between union and multiple employers).

Although the Appellate Division's summary affirmance and the abbreviated opinion of Special Term in this case make it difficult to determine precisely why the lower courts concluded that multipartite arbitration was not the proper procedure to follow in the instant case, it is a fair assumption that they did not consider it to be a procedure that a court could order. Special Term flatly stated that it is not "in the discretion of the court to determine what type of arbitration or other forum would have been best in this matter" (App. B at 6a).

The existence of these conflicting decisions raises substantial questions about the status of federal law on this issue. As the law now stands, parties in the Second, Third and Tenth Circuits could proceed to multipartite arbitration when more than two parties were involved in the dispute, whereas parties in the D.C. Circuit would proceed to bilateral arbitration. State courts would presumably be free to follow whatever line of authority they concluded was most persuasive.

As this Court recently emphasized in *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 105 S. Ct. 1904, 1911 (1985), "questions relating to what the parties to a labor agreement agreed, and what legal consequences were intended to flow from breaches of that agreement, must be resolved by reference to uniform federal law." Yet, because of the conflicting decisions of the federal courts, employers doing business in some geographical areas can expect different arbitration procedures than employers in other areas.

The interrelationship between arbitration over work assignment disputes and employers' and employees' rights under the NLRA underscores the importance of resolving this question. As the complaint issued against MEBA by the NLRB's General Counsel demonstrates (App. E), nonsignatories which are affected by arbitration awards rendered pursuant to procedures in which they have not participated will seek to protect themselves by involving the NLRB and its processes. Although bilateral arbitra-

tion may in some circumstances have a "curative effect", *Carey, supra*, 375 U.S. at 272, multipartite arbitration appears to be the best vehicle for avoiding a "merry-go-round situation," *Union Pacific, supra*, 385 U.S. at 162, in which employers and employees seek relief in protracted proceedings before one forum and then another.[13]

Multipartite arbitration should have been the procedure followed in the instant case, and the arbitrator's award is unenforceable because this procedure was not followed. However, the lower court's confirmation of the award is in accord with the views of some federal courts, albeit the views of a minority. Trinidad respectfully submits that this Court should grant the instant petition to resolve this conflict among the federal courts.

CONCLUSION

For all the foregoing reasons, a writ of certiorari should issue to review the judgment of the Appellate Division, Supreme Court of the State of New York, First Judicial Department.

Respectfully submitted,

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DATED: October 6, 1986

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[13] A multipartite arbitration would have resolved this dispute in 1983. It took three years of vigorously contested litigation for the bilateral arbitration award to achieve final confirmation in the New York state courts; the parallel NLRB proceedings have not yet reached a final conclusion.

APPENDICES

APPENDIX A

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on January 21, 1986

Present—Hon. Theodore H. Kupferman, Justice Presiding
Joseph P. Sullivan
David Ross
John Carro
Sidney H. Asch, Justices.

25601-02

DISTRICT NO. 1—PACIFIC COAST DISTRICT,
MARINE ENGINEERS' BENEFICIAL ASSOCIATION, AFL-CIO,
Petitioner-Respondent,

—against—

TRINIDAD CORPORATION,
Respondent-Appellant.

[Filed Jan. 21, 1986]

Appeals having been taken to this Court by the respondent-appellant from an order of the Supreme Court, New York County (Orest Maresca, J.), entered on November 23, 1984, and from a judgment of said court, entered thereon on November 23, 1984,

And said appeals having been argued by Peter Chatilovicz of counsel for appellant, and by Angelo V. Arcadipane of counsel for petitioner-respondent; and due deliberation having been had thereon,

It is unanimously ordered that the order and the judgment so appealed from be and the same hereby are affirmed. Petitioner-respondent shall recover of appellant one bill of $75 costs and disbursements of these appeals.

ENTER:

/s/ Harold J. Reynolds
Clerk

APPENDIX B

SUPREME COURT
NEW YORK COUNTY
SPECIAL TERM—PART 1

Index No. 92884 83
#284 of 4/30/84

DISTRICT NO. 1—PACIFIC COAST DISTRICT,
MARINE ENGINEERS' BENEFICIAL ASSOCIATION, AFL-CIO,
Petitioner,

—against—

TRINIDAD CORPORATION,
Respondent.

[Filed Nov. 15, 1984]

MARESCA, J.:

Petitioner seeks judgment pursuant to CPLR 7510 and section 301 of the Labor-Management Relations Act of 1947 (29 U.S.C. Sec. 185) confirming an arbitration award dated December 23, 1983. Respondent cross-moves to set aside the award.

Petitioner Marine Engineers' Beneficial Association ("MENA") [sic] is a labor organization which represents the licensed marine engineers employed on U.S. Flag Vessels owned and operated by respondent Trinidad Corporation.

MEBA and Trinidad are parties to a collective bargaining agreement executed in 1981 which covers the engineers. Two affiliated companies Crest Tankers, Inc. ("Crest") and Clayton Tankers, Inc. ("Clayton") were formed by Trinidad's parent corporation after Trinidad entered into the agreement with the Union. Crest and Clayton own and/or operate 8 vessels which are similar to and carry the same type of cargo as Trinidad's 17 owned or operated vessels.

The dispute between the parties arose as a result of Trinidad's refusal to bind Crest and Clayton to its agreement with the Union. The Union alleged that Trinidad's refusal was a breach of the agreement and initiated an arbitration to settle the dispute.

The arbitrator, W.J. Usery, Jr., determined first that he had jurisdiction under the terms of the collective bargaining agreement to decide the case and secondly that the business entities known as Crest Tankers, Inc. and Clayton Tankers, Inc. were covered under section 36 of the agreement.

Specifically, the arbitrator ruled that Crest, Clayton and Trinidad are "alter egos" and constitute a single common employer and therefore that the licensed marine engineers of Crest and Clayton are "accreted" to Trinidad's unit of engineers. Accordingly, the arbitrator ordered:

a) That Trinidad immediately cause Apex Oil (the parent corporaiton) [sic] Crest and Clayton to execute the agreement.

b) That Trinidad immediately apply the terms of the agreement to all licensed marine engineers employed on all vessels owned and operated by Crest or Clayton.

c) That Trinidad pay back wages and fringe benefit contributions for all licensed marine engineers employed on all vessels owned or operated by Crest and/or Clayton from the time said vessels were acquired until such time as the licensed marine engineers employed thereon are covered by the agreement.

Under well-established Federal Labor Law principles, unless Trinidad convincingly demonstrates that the arbitration decision does not "draw its essence" from the Trinidad-MEBA collective bargaining agreement, the court "is bound to enforce the award and is not entitled

to review the merits of the contract dispute". *W.R. Grace and Co. v. Local Union 759*, 461 U.S. 757, 103 S. Ct. 2177 (1983).

Similarly, under New York law, Trinidad must show by clear and convincing proof that the arbitration award should be vacated on one of the statutory grounds set forth in CPLR 7511(b). See, e.g., *Civil Service Employees Assn. v. Lombard*, 50 AD2d 708, 709 aff'd 41 NY2d 915.

Under section 2 of the collective bargaining agreement the arbitrator is empowered and obligated to interpret the agreement. That authority extends to interpretation of provisions within the agreement which specify the extent of coverage of the agreement. Section 36 of the agreement states:

> (a) This Agreement covers all licensed marine engineers employed on U.S. Flag ocean-going tanker vessels of whatever type, owned or operated (both at the present or at any time during the life of this Agreement) by the Company, *or its subsidiary or affiliate* . . . .
>
> (b) The term "subsidiary" or "affiliate" shall be deemed to include any business entity whether corporate, partnership, trust or individual which is effectively controlled by or effectively controls the Company either directly or indirectly. (emphasis added).

Based on the evidence submitted which detailed the relationship among the various entities, the arbitrator determined that Apex, Crest and Clayton were commonly controlled by the same entities and individuals who controlled Trinidad and therefore were subsidiaries and affiliates within the meaning of Article 36. This was within the meaning of Article 36. This was within his province and it is not up to the court to decide whether it would have done the same.

Nor is it in the discretion of the court to determine what type of arbitration or other forum would have been best in this matter. The arbitrator clearly had jurisdiction and he exercised it as he saw fit.

Under the circumstances, it cannot be said that the arbitrator exceeded his powers, i.e., that his award exceeded the scope of the submission and was so "totally irrational" that he effectively rewrote the agreement. See, e.g., *Local Division 1179 v. Green Bus Lines, Inc.*, 50 NY2d 1007.

Nor does it appear that the arbitrator's refusal to grant Trinidad's request for a continuance of the November 9, 1983 arbitration hearing was misconduct. Trinidad had been notified in October of the arbitration and had already received one continuance.

The arbitration award is not contrary to federal law as an unfair labor practice. First, as conceded by the parties, these engineers are supervisors and are not covered or protected by the provisions of the National Labor Relations Act. Secondly, although the engineers employed on the vessels owned and/or operated by Crest and Clayton have not expressed their desires to be represented by the Union, Crest and Clayton as "alter egos" of Trinidad are bound by Trinidad's agreement with the Union.

Accordingly, the petition to affirm the arbitrator's award is granted. The cross-motion is denied. This shall constitute the decision and judgment of the court.

Dated: November 14, 1984

/s/ Orest Maresca
J.S.C.

APPENDIX C

SUPREME COURT OF THE
STATE OF NEW YORK
SPECIAL TERM PART I
NEW YORK COUNTY
at the Courthouse thereof, 60 Centre Street,
New York, New York, 10007

Present: HON. OREST V. MARESCA
Justice.

DISTRICT NO. 1—PACIFIC COAST DISTRICT,
MARINE ENGINEERS' BENEFICIAL ASS'N

—against—

TRINIDAD CORPORATION

[Filed Nov. 23, 1984]

The following papers numbered 1 to 15 read on this motion, submitted.

No. 284 on Calendar of 4-30-84	PAPERS NUMBERED
Notice of Motion—	
and Affidavits Annexed	1- 3
Answering Affidavit	4-10
Replying Affidavit	11-13
—— Affidavit	
—— Affidavit	
Pleadings—Exhibit	
Stipulation—	
Referee's Report—	
Minutes	
Filed Papers notice of restoration	14
letter	15

Upon the foregoing papers this motion is decided in accordance with memorandum decision.

Dated November 14, 1984

Briefs: Plaintiff's — Defendant's — Petitioner's ✓ Respondent's ✓

Relator's —

/s/ Orest Maresca
J.S.C.

County Clerk's No. 92884, 1983
Spec I Liber 2 Line 9, 1984

APPENDIX D

STATE OF NEW YORK
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the eighth day of July A.D. 1986

Present, HON. SOL WACHTLER, *Chief Judge, presiding.*

1-10 Mo. No. 496

DISTRICT NO. 1—PACIFIC COAST DISTRICT,
MARINE ENGINEERS' BENEFICIAL ASSOCIATION,
Respondent,

vs.

TRINIDAD CORPORATION,
Appellant.

A motion for leave to appeal to the Court of Appeals in the above cause having been heretofore made upon the part of the appellant herein and papers having been submitted thereon and due deliberation thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied with twenty dollars costs and necessary reproduction disbursements.

/s/ Donald M. Sheraw
DONALD M. SHERAW
Clerk of the Court

APPENDIX E

UNITED STATES OF AMERICA BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 14

Case 14-CB-6124

DISTRICT NO. 1—PACIFIC COAST DISTRICT,
MARINE ENGINEERS' BENEFICIAL ASSOCIATION, AFL-CIO

and

CREST TANKERS, INC.

COMPLAINT AND NOTICE OF HEARING

It having been charged by Crest Tankers, Inc., herein sometimes called Charging Party, that District No. 1—Pacific Coast District Marine Engineers' Beneficial Association, AFL-CIO, herein sometimes called Respondent, has engaged in and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, et seq., herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director for Region 14, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations—Series 8, as amended, hereby issues this complaint and notice of hearing and alleges as follows:

1

A. The original charge in this proceeding was filed by Charging Party on November 17, 1983, and served by

certified mail upon Respondent on or about the same date.

B. The first amended charge in this proceeding was filed by Charging Party on January 10, 1984, and served by certified mail upon Respondent on or about the same date.

2

A. Charging Party is, and has been at all times material herein, a corporation duly authorized to do business under the laws of the State of Missouri.

B. At all times material herein, Charging Party has maintained its principal office and place of business at 7930 Clayton Road in the County of St. Louis, and State of Missouri, herein called the Charging Party's St. Louis place of business. Charging Party is, and has been at all times material herein, engaged in the international transportation of petroleum products on the high seas.

C. During the year ending December 31, 1983, which period is representative of its operations during all times material herein, Charging Party, in the course and conduct of its business operations derived gross revenues in excess of $50,000 for transportation of petroleum products from the States of North Carolina and/or Louisiana directly to points located outside said states.

D. Charging Party is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

E. Trinidad Corporation, herein sometimes called Trinidad, is and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of Delaware.

F. At all times material herein, Trinidad has maintained an office and place of business at 926 Public Ledger Building in the City of Philadelphia, and State of Pennsylvania, herein called Trinidad's Philadelphia

place of business. Trinidad maintains other places of business in the States of Missouri and California. Trinidad is, and has been at all times material herein, engaged in the international transportation of petroleum products on the high seas.

G. During the year ending December 31, 1983, which period is representative of its operations during all times material herein, Trinidad, in the course and conduct of its business operations derived gross revenues in excess of $50,000 for transportation of petroleum products from the States of Alaska and California directly to points located outside said states.

H. Trinidad is now and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3

A. Respondent is and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

B. Crest Tankers Officers Association, herein called the Association, is and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

4

At all times material herein, the following named persons occupied positions set opposite their respective names, and have been and are now agents of the Respondent, acting on its behalf, within the meaning of Section 2(13) of the Act.

J. M. Calhoon	—	President
Leon Shapiro	—	Secretary-Treasurer

5

The following employees of the Charging Party (hereinafter called the Crest Unit) constitute a unit appropri-

ate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All licensed officers, including engineer, deck and radio officers, employed on the United States flag ocean going vessels owned and operated by the Charging Party.

6

Since on or about October 29, 1982, and at all times material herein, the Association has been the lawfully designated exclusive collective-bargaining representative of the Crest Unit, and since on or about October 29, 1982, the Association has been recognized as such by the Charging Party. Such recognition has been embodied in a collective-bargaining agreement which is effective by its terms for the period of October 29, 1982 to October 29, 1985.

7

At all times since October 29, 1982, the Association, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative for the Crest Unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

8

At all times material herein, Respondent has been the collective-bargaining representative of the following persons employed by Trinidad (hereinafter called the Trinidad Unit):

> All licensed engineers employed on U.S. flag ocean going tankers owned by Trinidad.

9

At all times material herein, Respondent and Trinidad have been parties to successive collective-bargaining agreements covering the Trinidad Unit, the most recent

of which is effective by its terms for the period of June 16, 1981 to June 15, 1984.

10

At all times material herein, members of the Crest Unit have occupied the positions of chief engineer and first assistant engineer for the Charging Party, and have been supervisors within the meaning of Section 2(11) of the Act and/or representatives of the Charging Party for the purposes of collective bargaining or the adjustment of grievances.

11

The collective-bargaining agreement between Trinidad and Respondent referred to in paragraph 9, above, contains provisions requiring those persons covered by this agreement to become members of Respondent and maintain membership in good standing in Respondent during the term of the agreement.

12

A. On or about October 11, 1983, Respondent filed a grievance to compel Trinidad to force the Charging Party to apply Respondent's agreement with Trinidad, referred to in paragraph 9, above, to the Crest Unit.

B. On or about November 9, 1983, Respondent processed the grievance referred to in subparagraph 12A, above, to arbitration.

C. On or about December 23, 1983, Respondent filed a petition in the Supreme Court for the State of New York in New York County seeking to enforce an arbitration award compelling Trinidad to force the Charging Party to apply Respondent's agreement with Trinidad, referred to in paragraph 9, above, to the Crest Unit.

13

By the acts described above in paragraph 12, and by each of said acts, Respondent did restrain and coerce, and

is restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby did engage in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(b) (1) (A) and Section 2(6) and (7) of the Act.

14

By the acts and conduct described in paragraph 12, above, and by each of said acts, Respondent has restrained and coerced, and is restraining and coercing, an employer in the selection of its representatives for purposes of collective bargaining or adjustment of grievances, and Respondent thereby has been engaging in unfair labor practices within the meaning of Section 8(b) (1) (B) of the Act.

15

By the acts described above in paragraph 12, and by each of said acts, Respondent did attempt to cause and is attempting to cause an employer to discriminate against its employees in violation of Section 8(a) (3) of the Act, and thereby did engage in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(b) (2) and Section 2(6) and (7) of the Act.

16

By the acts and conduct described in paragraph 12, above, and by each of said acts, Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with an employer, and Respondent thereby has been engaging in unfair labor practices within the meaning of Section 8(b) (3) of the Act.

17

The acts of Respondent described in paragraph 12, above, occurring in connection with operations of Charging Party and Trinidad described in paragraph 2, above, have a close, intimate, and substantial relation to trade,

traffic, and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce within the meaning of Section 8(b)(1)(A), (b)(1)(B), (b)(2), and (b)(3) and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 23rd day of July 1984, at 9 a.m., or as soon thereafter as you may be heard, at Room 448, 210 Tucker Boulevard North, St. Louis, Missouri, a hearing will be conducted before a duly designated administrative law judge of the National Labor Relations Board on the allegations set forth in the above complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Summary of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases, is attached.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and 4 copies of an answer to said complaint within 10 days from the service thereof, and that unless it does so, all of the allegations in the complaint shall be deemed to be admitted to be true and may be found so by the Board. Immediately upon the filing of its answer, Respondent shall serve a copy thereof on each of the other parties.

May 29, 1984

/s/ Joseph H. Solien
Regional Director
National Labor Relations Board
Region 14
Room 448
210 Tucker Blvd. North
St. Louis, MO 63101

APPENDIX F

The NLRA, §§ 7 and 8, 29 U.S.C. §§ 157 and 158, which provide in pertinent part:

§ 7

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . .

§ 8

> (a) It shall be an unfair labor practice for an employer—
>
> . . . .
>
> (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization . . .
>
> . . . .
>
> (b) It shall be an unfair labor practice for a labor organization or its agents—
>
> (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;
>
> (2) to cause or attempt to cause an employer to discriminate against an employee

> in violation of subsection (a) (3) of this section . . .

Section 301 of the LMRA, 29 U.S.C. § 185, which provides in pertinent part:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Supreme Court, U.S.
FILED
NOV 24 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-529

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

TRINIDAD CORPORATION,
Petitioner,

v.

DISTRICT NO. 1—PACIFIC COAST DISTRICT,
MARINE ENGINEERS' BENEFICIAL ASSOCIATION,
Respondent.

On Petition for a Writ of Certiorari to the Appellate Division, Supreme Court of the State of New York, First Judicial Department

---

BRIEF FOR RESPONDENT IN OPPOSITION

ANGELO V. ARCADIPANE
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DATED: November 24, 1986

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTION PRESENTED FOR REVIEW

Whether the court below properly found that an arbitration award rendered by former United States Secretary of Labor W. J. Usery, Jr. "drew its essence" from the MEBA-Trinidad collective bargaining agreement, such that the court was "bound to enforce the award" and was "not entitled to review the merits of the contract dispute" under *W. R. Grace & Co.* v. *Local Union 759*, 461 U.S. 757, 764 (1983).

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

No. 86-529

TRINIDAD CORPORATION,
Petitioner,

v.

DISTRICT NO. 1—PACIFIC COAST DISTRICT,
MARINE ENGINEERS' BENEFICIAL ASSOCIATION,
Respondent.

On Petition for a Writ of Certiorari to the Appellate Division, Supreme Court of the State of New York, First Judicial Department

---

BRIEF FOR RESPONDENT IN OPPOSITION

COUNTERSTATEMENT OF THE CASE [1]

This is a proceeding to confirm an arbitration award rendered by former United States Secretary of Labor W. J. Usery, Jr. under a collective bargaining agreement. Petitioner nonetheless did not provide the Court with a copy of Secretary Usery's meticulous opinion and

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[1] Except where otherwise indicated, the facts in the counterstatement are taken from the record on appeal filed with the court below.

award, and otherwise obscures the true nature of this case. We are accordingly compelled to set out below a detailed statement of the relevant facts.

Respondent District No. 1—Pacific Coast District, Marine Engineers' Beneficial Association, AFL-CIO ("MEBA") is a labor organization primarily engaged in representing licensed officers who serve as supervisory marine engineers aboard ocean-going vessels. MEBA and petitioner Trinidad Corporation ("Trinidad") were parties to a 1981-1984 collective bargaining agreement ("MEBA-Trinidad Agreement" or "the Agreement") governing the wages, hours and working conditions of the latter's engineers. The Agreement expired on June 15, 1984 and has not been renewed. Accordingly, no agreement has existed between the parties for over two years.

By its terms, the MEBA-Trinidad Agreement covered "all licensed marine engineers employed on U.S. flag ocean-going tanker vessels * * * owned or operated * * * by [Trinidad], or its subsidiary or affiliate, or by an entity for which [Trinidad] acts as a bargaining agent." The term "subsidiary" or "affiliate" was defined in Section 36 of the Agreement as:

> * * * any business entity whether corporate, partnership, trust or individual which is effectively controlled by or effectively controls [Trinidad] either directly or indirectly.

In October 1983, MEBA served Trinidad with a demand for arbitration of a grievance which alleged that certain sister companies of Trinidad (Apex Oil Co., Crest Tankers, Inc. and Clayton Tankers, Inc.) were its "subsidiaries" or "affiliates," such that the marine engineering work being performed by those companies was covered by the Agreement.[2] By way of remedy, the

---

[2] These affiliates are hereinafter respectively referred to as "Apex," "Crest" and "Clayton."

grievance sought to recapture this work, and to make MEBA members whole for losses resulting from Trinidad's contract breach.

MEBA's grievance was submitted to former United States Secretary of Labor W. J. Usery, Jr., the permanent arbitrator selected by Trinidad and MEBA.[3] After securing a continuance of the arbitration hearing from Secretary Usery, Trinidad sued to enjoin the arbitration in federal district court in the District of Columbia. On Friday, November 4, 1983, the district court issued an order enjoining the arbitration on the grounds that the court needed time "to determine if it has subject matter jurisdiction hereof, and if the matters presently scheduled for arbitration on November 9, 1983 are properly arbitrable." (App. A at 2a).

The following Monday morning, MEBA filed an emergency motion to set aside the district court's order, which the Court of Appeals granted on Tuesday, November 8. *In Re District No. 1—Pacific Coast District, Marine Engineers' Beneficial Association*, 723 F.2d 70 (D.C. Cir. 1983) (opinion by Edwards, J.). The Court of Appeals held that it was "absolutely clear" that the district court was "without jurisdiction" to enjoin the arbitration, and that its injunction in any event constituted a "clear abuse of discretion" requiring reversal:

> Simply stated, the action of the District Court was almost wholly inconsistent with well-established law regulating collective bargaining, the enforcement of collective bargaining agreements, and relations between the judiciary and labor arbitrators in the private sector.

Id. at 76, 77. The Court of Appeals accordingly vacated the district court's injunction, "so as to allow arbitration

---

[3] The Agreement provided in pertinent part that "[a]ll disputes relating to the interpretation or performance" of the Agreement shall be submitted to binding arbitration.

to proceed as scheduled" on November 9 before Arbitrator Usery, "a former Secretary of Labor and well-known expert in collective bargaining." *Id.* at 73, 79.[4]

On December 23, 1983, Secretary Usery issued a detailed opinion sustaining the grievance.[5] He concluded that Trinidad's sister companies in fact were its " 'subsidiaries' and 'affiliates' " within the meaning of Section 36 of the Agreement, and that those companies' marine engineering work was covered by the Agreement. (App. B at 11a-12a).[6] The New York Supreme Court confirmed Secretary Usery's award in a decision dated November 14, 1984. In its decision, the Supreme Court first discussed the heavy burden under federal law which Trinidad had to shoulder in order to overturn Secretary Usery's award:

> Under well-established Federal Labor Law principles, unless Trinidad convincingly demonstrates that the arbitration decision does not "draw its essence" from the Trinidad-MEBA collective bargaining agreement, the Court "is bound to enforce the award and is not entitled to review the merits of

---

[4] On November 9, 1983, Trinidad filed an Application to Vacate the Court of Appeals' Order with then-Chief Justice Burger, who summarily denied the Application the same day. (Docket No. A-357). On January 10, 1984, Trinidad voluntarily dismissed its action pursuant to Fed.R.Civ.P. 41(a)(1)(i).

[5] Secretary Usery's opinion and award are reproduced in full in Appendix B to this brief.

[6] As Trinidad notes in its petition, after Arbitrator Usery issued his award, Crest filed unfair labor practice charges alleging that MEBA violated the National Labor Relations Act by peacefully processing its grievance through arbitration. On September 24, 1986, NLRB Administrative Law Judge Itkin issued a decision finding (as had Arbitrator Usery) that Crest and Trinidad were alter egos and dismissing Crest's charges in their entirety. Judge Itkin's decision is presently on appeal to the NLRB.

> the contract dispute." *W. R. Grace and Co.* v. *Local Union* 759, 461 U.S. 757, 103 S. Ct. 2177 (1983).

(App. B to Pet. at 4a-5a).

After reviewing Secretary Usery's findings and conclusions as to whether Trinidad and its sister companies were "subsidiaries and affiliates" under Section 36 of the Agreement, the court found them to be consistent with the meaning of that Section. Secretary Usery's determination in that regard was "within his province," and it was not for the court "to decide whether it would have done the same." (*Id.* at 5a).

The New York Supreme Court accordingly confirmed the award in full and directed:

> a) That Trinidad immediately cause Apex Oil[,] * * * Crest and Clayton to execute the agreement.
>
> b) That Trinidad immediately apply the terms of the agreement to all licensed marine engineers employed on all vessels owned and operated by Crest or Clayton.
>
> c) That Trinidad pay back wages and fringe benefit contributions for all licensed marine engineers employed on all vessels owned or operated by Crest and/or Clayton from the time said vessels were acquired until such time as the licensed marine engineers employed thereon are covered by the agreement.

(*Id.* at 4a).

Paragraphs (a) and (b) of the award and judgment, relating to Trinidad's obligation to extend the MEBA-Trinidad Agreement to Crest's marine engineering work, are now moot: the Agreement expired on June 15, 1984 and has not been renewed. As a consequence, no MEBA agreement exists which could be so extended.[7]

---

[7] Issues concerning the backpay and benefits portion of Secretary Usery's award are still in litigation before the New York state

Trinidad appealed the court's judgment to the Appellate Division of the New York Supreme Court, First Judicial Department, which affirmed in a unanimous decision issued January 21, 1986. On July 8, 1986, the New York Court of Appeals denied Trinidad's Motion for Leave to Appeal.

REASONS WHY THE PETITION SHOULD BE DENIED

Introduction

Trinidad's entire argument in support of its Petition rests on its contention that there is a conflict among the federal courts of appeals concerning the availability of multipartite arbitration. In what follows, we first demonstrate that the question Trinidad presents for review does not turn on resolution of the claimed conflict; rather, that question is resolved by reference to the well-settled rule that where parties to a labor contract have agreed to arbitrate disputes arising under the contract, the reviewing court should enforce the arbitrator's ruling so long as it draws its essence from the contract. We then show that the question Trinidad presents was not decided below and is not the subject of intracircuit conflict.

A. The Record In This Case Does Not Raise The Question Trinidad Presents

According to Trinidad, the question presented for review is whether a labor arbitration award rendered pursuant to a collective bargaining agreement is unenforceable under Section 301 of the Labor Management Relations Act when the award "applies" to entities not signa-

---

courts. The amount of lost wages and benefits owed by Trinidad was determined by Secretary Usery in a supplemental award issued in August, 1985. That supplemental award was confirmed by the New York Supreme Court and is presently pending before the Appellate Division.

tory to the agreement. But even a cursory reading of Secretary Usery's award makes clear that it does not "apply" to or bind any entity other than Trinidad. Arbitrator Usery's analysis was lucid and straightforward. He stated that:

> The Company has argued that the Arbitrator does not have jurisdiction to determine the "rights or obligations of corporations, labor organizations, or individuals who are not signatories to the contract from which the arbitrator derives his authority" (Brief of the Company, page 6). This is unquestionably true, and *this Arbitrator does not seek to determine the rights or obligations of nonsignatory parties. The Arbitrator's authority in this case is restricted to the determination of the rights and obligations of those who are parties to the Agreement.*

(App. B at 6a (emphasis added)).

Thus, on this record, Trinidad's petition is reduced to the proposition that the award should be set aside because other entities may be affected by Secretary Usery's enforcement against Trinidad of a bargain which it freely made. That position was uniformly and inevitably rejected by the courts below. As those judges recognized, the sole and unexceptional issue in this case is the traditional one, namely, whether Arbitrator Usery's award "drew its essence" from the collective bargaining agreement, such that the court was "bound to enforce the award" and was "not entitled to review the merits of the contract dispute" under the rules established in the *Steelworkers Triology*[8] and reaffirmed in *W. R. Grace & Co.* Trinidad nowhere argues that Arbitrator Usery's award does not "draw its essence" from the Trinidad-BEBA Agreement. Accordingly, the petition raises no important issue of federal law warranting review by this Court.

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[8] *Steelworkers* v. *American Mfg. Co.*, 363 U.S. 564 (1960); *Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

B. This Case Does Not Present An Issue Concerning The Propriety Of Multipartite Arbitration

In an effort to attract this Court's attention, Trinidad invokes a line of decisions stemming from *CBS* v. *American Recording & Broadcasting Association*, 414 F.2d 1326 (2d Cir. 1969), and asserts that "the instant petition should be granted to clarify any misconceptions that the lower courts have with respect to this Court's position on the issue of multipartite arbitration." (Pet. at 11). But this case presents no genuine issue concerning multipartite arbitration, for three independent reasons.

First, and most fundamentally, Trinidad did not preserve any request for multipartite arbitration in its appeal to the Appellate Division, which consequently did not pass on the propriety of such a request. Therefore, Trinidad may not raise in this Court the claimed conflict as to judicial authority to order multipartite arbitration. *E.g.*, *State Farm Mutual Insurance Co.* v. *Duel*, 324 U.S. 154, 160 (1945); *Ungar* v. *Sarafite*, 376 U.S. 575, 582-583 (1964).[9]

Moreover, if this case ever presented a live controversy concerning the propriety of multipartite arbitration, that issue became moot in June 1984 when the Trinidad-MEBA Agreement expired. Thereafter, there was no contract to "apply" to Crest and no possibility that Crest could be subject to conflicting demands; all that remained was an order directing Trinidad to compensate MEBA's members for the work they lost. See n. 7, *supra*. In these circumstances, any request by Trinidad for multipartite arbitration is now moot. *See Local 201* v. *Shaker, Travis & Quinn, Inc.*, 709 F.2d 178 (2d Cir. 1983), *vacating* 555 F. Supp. 314 (S.D.N.Y. 1983).

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[9] Trinidad implicitly concedes as much by not asking this Court to review any refusal by the court below to order multipartite arbitration.

Finally, the propriety of multipartite arbitration has been recognized only where (as in *CBS* and its progeny) the underlying dispute is jurisdictional in nature. In the classic jurisdictional dispute, an employer promises one type of work (*i.e.*, plumbing) to one union and another type of work (*i.e.*, electrical) to another. In that circumstance, only one group of employees is entitled to perform the work and resolution of the dispute turns on whether the work is plumbing work or electrical work. By contrast, Trinidad promised that MEBA's members would perform *all* the marine engineering work for Trinidad and its subsidiaries and affiliates, including Crest. According to Trinidad, Crest thereafter promised its marine engineering work to another group of supervisory marine engineers. If so, one group of engineers is entitled to perform Crest's work and the other is entitled to damages. *See W. R. Grace & Co.*, 461 U.S. at 768 n.12 ("Economic necessity is not recognized as a commercial impracticability defense to a breach of contract claim," but is the price one pays for assuming conflicting contractual obligation).

The difference in the two types of cases discussed above is analogous to the difference between (1) the situation where a seller contracts to sell all his diamonds to Buyer A and all his zirconium to Buyer B, and both A and B claim entitlement to a given stone; and (2) the situation where a seller contracts to sell "Blackacre" to two different buyers. In the former situation, a court must decide whether the stone is a diamond or zirconium, and award it to the appropriate buyer. In the latter situation, both buyers are entitled to judgment, one for specific performance and one for damages. *Id. CBS* falls into the former category; this case falls into the latter.

C. No Conflict Exists As To The Availability Of Multipartite Arbitration

Trinidad's assertion (Pet. at 8) that there is an intracircuit conflict regarding the "appropriateness" of multi-

partite arbitration is specious. According to Trinidad (Pet. at 11-12), the Second Circuit "approved" multipartite arbitration in *CBS*, and the Third and Tenth Circuits have followed *CBS*. The sole court of appeals case claimed to be in conflict is that of the District of Columbia Circuit earlier in this litigation (*see* pp. 3-4 *supra*).

Trinidad baldly asserts (Pet. at 13) that the District of Columbia Circuit "expressly refused to order multipartite arbitration" in *In re District No. 1*. That assertion is flatly wrong because the District of Columbia Circuit was not there confronted with the propriety of ordering multipartite arbitration. The district court order appealed from did not direct such an arbitration, but merely enjoined the scheduled bilateral arbitration "for the time necessary to enable the Court to determine if it has subject matter jurisdiction hereof, and if the matters presently scheduled for arbitration on November 9, 1983 are properly arbitrable." (App. A at 2a).[10] Accordingly, the District of Columbia Circuit did not disagree with the Second or any other Circuit concerning the authority of the courts to order multipartite arbitration. Instead, it simply held that the issuance of an injunction against bilateral arbitration for the reasons advanced by the district court violated the Norris-LaGuardia Act and constituted a clear abuse of discretion.

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[10] Indeed, Trinidad conceded in the district court that, because neither CTOA nor Crest had agreed to participate in such an arbitration, the court "lack[ed] the power to force the parties into a joint arbitration proceeding." (Trinidad Memorandum in Support of Motion for Temporary Restraining Order at 8). For that reason, Trinidad urged the district court to decide the merits of the MEBA grievance, asserting that the district court was "the appropriate, indeed the only, forum in which this dispute can be resolved." (*Id.* at 11).

CONCLUSION

For the foregoing reasons, the Petition for Certiorari should be denied.

Respectfully submitted,

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November 24, 1986

APPENDICES

APPENDICES

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 83-3257

TRINIDAD CORPORATION,
Plaintiff,

v.

DISTRICT NO. 1—PACIFIC COAST DISTRICT,
MARINE ENGINEERS' BENEFICIAL ASSOCIATION,

and

CREST TANKER OFFICERS' ASSOCIATION,
Defendants.

Civil Action No. 83-3297

CREST TANKERS, INC. and CLAYTON TANKERS, INC.,
Plaintiffs,

v.

DISTRICT NO. 1—PACIFIC COAST DISTRICT,
MARINE ENGINEERS' BENEFICIAL ASSOCIATION,
(AFL-CIO),
Defendant.

[Filed Nov. 4, 1983]

TEMPORARY RESTRAINING ORDER

Upon consideration of the motions of plaintiffs Trinidad Corporation ("Trinidad"), Crest Tankers, Inc. ("Crest") and Clayton Tankers, Inc. ("Clayton"), for a temporary restraining order enjoining the arbitration of a dispute between plaintiff Trinidad and defendant District 1—Pacific Coast District Marine Engineers' Beneficial Association, AFL-CIO ("MEBA"), with respect to the coverage of the collective bargaining agreement described in the complaint in Civil Action No. 83-3257 as the "Tanker Vessels Agreement," pursuant to defendant MEBA's demand therefor contained in the letter of its general counsel of October 11, 1983, and of defendant MEBA's opposition thereto, and of the oral argument and representations of counsel thereon of November 3 and 4, 1983, in open court; and it appearing to the Court that plaintiff has shown sufficient indication of imminent irreparable harm and the likelihood of prevailing on the merits to warrant the preservation of *status quo* for the time necessary to enable the Court to determine if it has subject matter jurisdiction hereof, and if the matters presently scheduled for arbitration on November 9, 1983 are properly arbitrable,[1] while defendant has failed to demonstrate that it will suffer any substantial hardship thereby, and the Court being of the opinion that both the public interest and the interest of justice are best served by an orderly and deliberate consideration of the issues presented following hearing of plaintiffs' applications for a preliminary injunction, it is, this 4th day of November, 1983, at 6:00 p.m., o'clock,

ORDERED, that plaintiffs' motions for a temporary restraining order are granted; and it is

FURTHER ORDERED, that defendant District 1—Pacific Coast District, Marine Engineers' Beneficial As-

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[1] *See United States* v. *United Mine Workers of America*, 330 U.S. 258, 289-95 (1947).

sociation, its officers, agents, servants, employees, and attorneys, and all others in active concert or participation with it, are ordered to refrain from any further prosecution of the arbitration proceedings aforesaid, or efforts to compel the same in any forum other than this Court, with respect to any of the matters presently scheduled for presentation to the arbitrators on November 9 and 10, 1983, in New York City, provided, however, that plaintiff shall first post cash, or injunction bond appropriately conditioned, in a principal amount of $10,000.00, by 4:30 p.m., November 7, 1983, and shall cause a copy of this order to be personally served forthwith upon defendant and upon W.J. Usery, Jr., Arbitrator; and it is

FURTHER ORDERED, that hearing of plaintiffs' motions for a preliminary injunction is scheduled before this Court on November 14, 1983 at 10:00 a.m. o'clock; and it is

FURTHER ORDERED, that unless earlier dissolved, modified, or extended, this order shall expire on Monday, November 14, 1983 at 6:00 p.m. o'clock.

/s/ Thomas Penfield Jackson
THOMAS PENFIELD JACKSON
U.S. District Judge

APPENDIX B

DECISION AND AWARD

IN THE MATTER OF ARBITRATION BETWEEN:

DISTRICT NO. 1—PACIFIC COAST DISTRICT,
MARINE ENGINEERS' BENEFICIAL ASSOCIATION,
AFL-CIO

—and—

TRINIDAD CORPORATION

Appearances:

For Marine Engineers' Beneficial Association ("Union"):

Ira Mitzner, Counsel

For Trinidad Corporation ("Company"):

Adin Goldberg, Counsel

The Union and the Company are parties to an Agreement executed in 1981 covering Company supervisors (licensed marine engineers) employed on 17 vessels owned and/or operated by the Company. Section 36(b) of that Agreement seeks to bind all affiliates and subsidiaries of the Company to the Agreement. Two allegedly affiliated companies, Crest Tankers Inc. ("Crest"), and Clayton Tankers, Inc. ("Clayton") were formed by the Company's parent corporation after it (the Company) entered into the Agreement with the Union. Those af-

filiates (Crest and Clayton) own and/or operate 8 vessels which are similar to and carry the same type of cargo as the Company's 17 owned or operated vessels. The Company has refused to bind Crest and Clayton to its Agreement with the Union.[1] The Union alleges that the Company's refusal is a breach of the Agreement, and has initiated this arbitration to settle that dispute.

The initial hearing in this case was held on October 19, 1983. On that date, counsel for Trinidad requested a continuance, which was granted by the Arbitrator. The hearing was re-scheduled for November 9, 1983. During this period, the Company sought and was granted a temporary restraining order in Federal District Court on November 4, 1983, to prevent the holding of the arbitration hearing. This order was vacated by a two-member panel of the U.S. Court of Appeals for the District of Columbia Circuit on November 8, 1983. The hearing took place as scheduled, on November 9, 1983.

Counsel for both the Union and the Company were in attendance when the hearing was re-opened. Both parties were given ample opportunity to present their arguments, both at the hearing and in post-hearing briefs. There is, therefore, no justification for delaying this decision on the ground that one side or the other has not had sufficient time or opportunity to present its case.

Two fundamental issues must be decided by the Arbitrator in this case.[2] First, the Arbitrator must decide if

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[1] These licensed marine engineers employed by Crest are covered by an agreement (executed on October 29, 1983) with the Crest Tankers Officers Association. The Company contends, therefore, that it can't cover their engineers under the Agreement with the Union.

[2] The Company argues that the Union waited too long to assert its grievance and that the case should be dismissed under the doctrine of latches. The Union contends it learned of facts supporting its grievance only weeks before it filed the grievance. I decline to apply the latches defense, noting that the Agreement con-

he has jurisdiction, under the terms of the collective bargaining Agreement, to decide this case. Second, if the Arbitrator decides he does have jurisdiction, he must make a decision on the merits of the case. These issues will be dealt with separately.

Jurisdiction of the Arbitrator

The Company has argued that the Arbitrator does not have jurisdiction to determine the "rights or obligations of corporations, labor organizations, or individuals who are not signatories to the contractor from which the arbitrator derives his authority" (Brief of the Company, page 6). This is unquestionably true, and this Arbitrator does not seek to determine the rights or obligations of non-signatory parties. The Arbitrator's authority in this case is restricted to the determination of the rights and obligations of those who *are* parties to the Agreement.

This determination hinges on the question of whether certain business entities (i.e., Crest Tankers, Inc., and Clayton Tankers, Inc.) are, in fact, parties to and bound by the Agreement by virtue of their relationship with Trinidad Corporation. The Company (Trinidad) argues that these other entities are entirely separate and do not represent "alter egos" of Trinidad. According to the Company, since these other entities are separate, and have their own labor agreements, the Arbitrator does not have the authority to arbitrate a decision which would in any way determine the rights and obligations of these other entities.

The Company's argument is essentially that this is a dispute more properly resolved in a different forum. The

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tains no time limit, that the Company does not appear to have been harmed by any delay, that the Union's explanation is plausible, and that the Union, even if it knew all the facts months ago, could reasonably assume that the Company would comply with the Agreement—at least until it signed an agreement with Crest Tanker Officers Association in October, 1983. *Capital Times*, 44 LA 585 (1965).

case involves two different labor organizations which are in conflict over the right to perform certain work. Thus, according to the Company, this is a representation case, which should be heard and decided by a federal court, where all parties can be represented.

Both the Company and the Union have relied heavily on the decision of the U.S. Supreme Court in the case of *Carey v. Westinghouse*, 375 U.S. 261 (1964). In *Carey*, the employer was seeking to avoid arbitration of a dispute in which one union claimed that work being done by another union was more properly within the domain of the first union. The employer, viewing the matter as a jurisdictional dispute, preferred that it be settled at the National Labor Relations Board ("NLRB" or "Board"). The union which filed the grievance claimed that it was not a *jurisdictional* dispute, but rather a *work assignment* dispute, and pressed for arbitration.

The Court decided that how the case was defined was not the crucial issue in its resolution:

> However the dispute be considered—whether one involving assignment or one concerning representation—we see no barrier to use of the arbitration procedure. If it is a work assignment dispute, arbitration conveniently fills a gap and avoids the necessity of a strike to bring the matter to the Board. If it is a representation matter, resort to arbitration may have a pervasive, curative effect even though one union is not a party. (375 U.S. 261, at 272)

The Arbitrator agrees with the Court's reasoning. The Court was attempting to resolve the issue in a manner congruent with the intent of Congress in passing the National Labor Relations Act:

> By allowing the dispute to go to arbitration its fragmentation is avoided to a substantial extent; and those conciliatory measures which Congress deemed vital to "industrial peace" . . . and which

> may be dispositive of the entire dispute, are encouraged. The superior authority of the Board may be invoked at any time. Meanwhile the therapy of arbitration is brought to bear in a complicated and troubled area. (375 U.S. at 272)

The Company contends that the reason the Court in *Carey* had no objection to the use of arbitration in that case was that the employees involved were covered by the protections of the National Labor Relations Act. They were "employees" under the meaning of that act, and could, therefore, invoke the provisions of the Act, including the authority of the National Labor Relations Board, if the dispute over representation was not resolved satisfactorily. Since the Trinidad case involves only *supervisory* employees, who are *not* covered by the National Labor Relations Act, recourse to the Board is not available. The Company argues, therefore, that *Carey* does not apply to the present case, and that the Arbitrator should not proceed with a decision because doing so would "almost surely serve to perpetuate the dispute, not end it" (Brief of the Company, p. 11).

The Arbitrator finds this reasoning unconvincing. As the Court said in *Carey*, the arbitration process may, in itself, provide a means for a total resolution of the dispute. On the other hand, if some parties to the arbitration process find its result unsatisfactory, they can file suit in federal court. Although the Arbitrator's decision will undoubtedly be given great deference in any later proceedings, that decision *might* be overturned if the court decided the Arbitrator proceeded improperly. Therefore, there is no substance to the argument that the Arbitrator should not proceed because the affected parties would have no recourse after his decision.

The Supreme Court affirmed this in *Carey*, with reference to the possibility of conflict between an Arbitrator's award and a later ruling by the National Labor Relations Board:

> Should the Board disagree with the arbiter, by ruling, for example, that the employees involved in the controversy are members of one bargaining unit or another, the Board's ruling would, of course, take precedence; . . . But that is not peculiar to the present type of controversy. Arbitral awards construing a seniority provision . . . or awards concerning unfair labor practices, may later end up in conflict with Board rulings. . . . Yet, as we held in Smith v. Evening News Assn., supra, the possibility of conflict is no barrier to resort to a tribunal other than the Board. (375 U.S. at 272)

Finally, the Arbitrator is empowered and obligated by Section 2 of the collective bargaining Agreement to interpret the Agreement. That authority extends to interpretation of provisions within the Agreement which specify the extent of coverage of the Agreement. Section 36 of the Agreement deals with the coverage of the Agreement over employees of the various signatory parties. When a grievance is filed by one party or the other with respect to the meaning of that section, the Arbitrator has a responsibility under the contract to interpret the intent and meaning of Section 36 to the best of his ability. The possibility that his decision might be overturned later in court does not relieve him of his obligation.

The Arbitrator concludes, therefore, that he has jurisdiction over the present dispute.

The Merits of the Case

First, the Arbitrator must determine if Section 36 of the collective bargaining Agreement obligates the business entities known as "Crest Tankers, Inc." and "Clayton Tankers, Inc." to comply with the terms of the Agreement. Since these organizations are nominally not signatories to the Agreement, the issue in this case is whether these organizations were shown to have a relationship

with a signatory firm which obligates them (Crest and Clayton) to comply with the Agreement.

The Agreement itself deals with this issue. Thus, the signatory parties (Trinidad Corporation and the Union) have agreed that, under certain conditions, parties related to Trinidad shall be bound by the Agreement. These conditions are spelled out in Section 36 of the Agreement:

> This agreement covers all licensed marine engineers employed on U.S. flag ocean-going vessels, of whatever type, owned or operated (both at the present or any time during the life of this Agreement) by the Company or its subsidiary or affiliate, or by an entity for which the Company acts as a bargaining agent, and whether operated as an agent or including vessels owned by the Company or its subsidiary or affiliate and operated by another entity, but not including a vessel operated on a time charter basis.
>
> In the event the Company places into operation a new type of ocean-going vessel, the parties shall meet and negotiate such terms and conditions of employment as may be appropriate.
>
> The term "subsidiary" or "affiliate" shall be deemed to include any business entity whether corporate, partnership, trust or individual which is effectively controlled by or effectively controls the Company either directly or indirectly.
>
> The Union may in its discretion at any time require that any such subsidiary or affiliate execute this Agreement and a refusal to do so will give the Union the right upon a 10-day written notice to the Company to cancel this Agreement. The failure of the Union to request a subsidiary or affiliate to sign this Agreement shall not in any way affect the obli-

> gation of the Company herein that this Agreement does cover and include all the licensed engineers on all the vessels described above whether owned or operated by the Company or any of its subsidiaries or affiliates. (1981-1984 Tanker Service Vessels Agreement, pp. 95-96)

In other words, a firm *or any of its subsidiaries or affiliates* is required to comply with the Agreement if the firm itself is a signatory. According to testimony at the November 9, 1983, hearing, this provision was included in the Agreement to prevent companies (such as Trinidad) from creating complex structures of holding companies and subsidiaries simply to avoid complying with the Agreement.

The contract question that remains is whether the entities in this case (*Crest* and *Clayton*) represent "subsidiaries or affiliates" of Trinidad Corporation within the meaning of these terms in the Agreement. The Agreement defines the terms "subsidiary" or "affiliate" to include "any business entity whether corporate, partnership, trust, or individual which is effectively controlled by or effectively controls the Company either directly or indirectly." Thus, the Arbitrator must decide whether the relationships among Trinidad, Crest, and Clayton are such that they may be described as "subsidiaries" or "affiliates".

Evidence presented detailed the relationships among the various entities.[3] Trinidad is wholly owned by Apex

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[3] The Company contends that much of the evidence in the record concerning the organization of the various entities consists of hearsay admissions of various company officials contained in depositions taken in another proceeding and that the Arbitrator's decision should not be based upon such hearsay evidence. I reject the contention. First, I am aware of no restrictions that preclude an arbitrator from considering hearsay evidence or from basing a decision on such evidence. Second, admissions against interest, even in the form of depositions, are not "hearsay" and, in my view,

Shipping, which, in turn is wholly owned by Apex Holding. Apex Holding also wholly owns Crest Tankers and Clayton Tankers, which have both been created within the past two years. Apex Holding is itself wholly owned by Apex Oil. The same person serves as President and Chief Executive Officer of all the companies[4], there are a substantial number of common officers for all the companies, and the Boards of Directors of all are the same. Further, it appears that work is allocated to all vessels owned and/or operated by Trinidad, Crest and Clayton from one common source. Although it is claimed that each company establishes and runs its own labor relations programs and policies, no specific evidence was presented on this point, and the Union's evidence, although limited, tends to refute that claim.

Thus, in interpreting the Agreement, I find that the relationships among the various entities in this case represent precisely the kind of structure that much of Section 36 of the Agreement was developed to deal with. Accordingly, Apex Oil is obligated to comply with the terms of the Agreement, since it "effectively controls" Trinidad, through Apex Holding and Apex Shipping. In the same way, Apex Holding and Apex Shipping are obligated to comply with the Agreement. Further, since Crest and Clayton are "effectively controlled" by Apex Oil (through Apex Holding), Crest and Clayton are obligated to comply with the terms of the Agreement.

Finally, the Arbitrator finds that the Agreement, as interpreted, is not contrary to the law or public policy embodied in the National Labor Relations Act (the

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constitute acceptable evidence upon which I may base my decision. Federal Rules of Evidence 801(d)(2).

[4] Apparently another individual became President of Trinidad in October, 1983, but because that event occurred long after the Union's request that Crest and Clayton become bound to the Union's Agreement, it is not considered by this Arbitrator to have a meaningful bearing on this case.

"Act"). It is true that the engineers employed on the vessels owned and/or operated by Crest and Clayton have not expressed their desires to be represented by the Union or to be covered by its agreement. However, for the reasons summarized below, this Arbitrator finds, under the facts of this case, that neither representation of those engineers by the Union nor their coverage under the Agreement violates existing law or policy under the Act.

First, as the Company concedes in its argument concerning the jurisdiction of this Arbitrator, these engineers are all supervisors who are not covered by or protected by the provisions of the National Labor Relations Act.

Second, even if the engineers were protected "employees" under the Act, it appears from the record that Crest and Clayton are alter egos of Trinidad and, thus, would be bound to Trinidad's Agreement with the Union under the Act even if the Agreement did not so provide. In this connection, I considered the following facts: the extent of common ownership and control of the three companies (Trinidad, Crest, and Clayton); the timing of the formation of Crest and Clayton following Trinidad's Agreement with the Union; the common source which allocates cargos to all three companies; the similarity of vessels and cargos of all three companies; and the fact that Crest and Clayton own and/or operate only 8 of the 25 vessels owned and/or operated by the three companies.

Third, even if Crest and Clayton are not alter egos of Trinidad, based upon the facts outlined in the preceding paragraph, the record supports the further conclusion that all three constitute a single, common employer, and that the vessels and engineers of Crest and Clayton have been accreted to Trinidad's unit of engineers and are, accordingly, covered by Trinidad's Agreement with the Union. And this conclusion is enforced by the fact that the National Labor Relations Board normally finds that a

fleet-wide unit is appropriate in the shipping industry. *Moore-McCormack Lines, Inc.* 139 NLRB 796 (1962).

AWARD

Trinidad Corporation and its officers, agents, servants, employees, and attorneys, and all those persons in active concern or participation with them, shall:

1. Immediately cause Apex Oil, Crest, and Clayton to execute the Agreement.[5]

2. Immediately apply the terms of the Agreement to all licensed marine engineers employed on all vessels owned or operated by Crest or Clayton.

3. Pay to the Union, for the benefit of its members who have lost work as a result of the failure of Crest and Clayton to comply with the Agreement, the amount of wages that a full complement of engineers would have earned had they been employed on all vessels owned or operated by Crest and/or Clayton, from the time said vessels were acquired or operated by Crest and/or Clay-

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[5] The Company contends that the sole remedy for breach of Section 36 is the Union's right to cancel the Agreement and strike. However, Section 36 does not state that this is the sole remedy. Indeed, that section states that: "The failure of the Union to request a subsidiary or affiliate to sign the Agreement shall not . . . affect the obligation . . . of the Company . . . that this Agreement does cover . . . the licensed engineers . . . of its subsidiaries or affiliates." Further, the grievance and arbitration provisions of the Agreement (Section 2) provide that "all disputes relating to the interpretation or performance of this Agreement shall be determined in accordance with the provisions of this section." Accordingly, absent any evidence to the contrary, I interpret Section 36 as granting the Union alternative means of enforcing compliance with its provisions: either Agreement termination and striking *or* arbitration enforcement of the provisions of Section 36. As the Union has chosen the latter, I am obligated to enforce Section 36 and am not empowered, at least in this case, to terminate the parties' Agreement.

ton until such time as the licensed marine engineers employed thereon are covered by the Agreement.

4. Pay to the appropriate Benefit Plans the amount of contributions that would have been paid to said Plans under the Agreement had a full complement of engineers been employed on all vessels owned or operated by Crest and/or Clayton, from the time said vessels were acquired or operated by Crest and/or Clayton until such time as the licensed marine engineers employed thereon are covered by the Agreement.

5. Turn over to the Union all necessary documents to enable the Union to determine the lost wages and benefits suffered, calculated according to the methodology approved by the Council of Economic Advisers.

6. The Arbitrator retains jurisdiction in order to carry out all aspects of this award.

/s/ W.J. Usery, Jr.
W. J. USERY, JR.
Arbitrator

Dated: December 23, 1983